

立法會
Legislative Council

LC Paper No. LS39/19-20

**Legal Service Division Report on
Court Proceedings (Electronic Technology) Bill**

I. SUMMARY

1. The Bill

The Bill seeks to:

- (a) provide for the use and phased implementation of electronic technology in relation to proceedings in a court (which includes specified tribunals) and other court-related purposes as an alternative to conventional paper-based methods;
- (b) enable fees to be provided for in respect of the use of electronic technology in court-related matters; and
- (c) provide for related matters.

2. Public Consultation

According to the Judiciary Administration ("JA"), various stakeholders including the Hong Kong Bar Association and The Law Society of Hong Kong were consulted and they generally supported the proposed legislation. The Judiciary will continue to discuss the technical and operational issues with the stakeholders.

**3. Consultation with
LegCo Panel**

As advised by the Clerk to the Panel on Administration of Justice and Legal Services, JA briefed the Panel at its meeting on 29 April 2019 on the legislative proposal for the implementation of the Information Technology Strategy Plan ("ITSP"). Members generally supported the early implementation of the legislative proposal. Some members raised certain concerns such as the slow implementation of ITSP, the problems with adapting to the electronic mode of handling court transactions and related security issues.

4. Conclusion

The Legal Service Division is scrutinizing the Bill. In view of the Panel members' concerns, Members may consider studying the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 8 January 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: AW-275-005-010-009) issued by the Chief Secretary for Administration's Office and the Judiciary Administration ("JA") dated 24 December 2019 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) provide for the use and phased implementation of electronic technology ("e-technology") in relation to proceedings in a court (which includes specified tribunals) and other court-related purposes as an alternative to conventional paper-based methods;
 - (b) enable fees to be provided for in respect of the use of e-technology in court-related matters; and
 - (c) provide for related matters.

Background

3. At present, by virtue of section 13 of the Electronic Transactions Ordinance (Cap. 553), provisions (i.e. sections 5 to 8 of Cap. 553) permitting information or documents to be given, served, presented, retained or signed electronically do not apply to court or tribunal proceedings unless any rule of law relating to those proceedings provide for their application. According to paragraph 3 of the LegCo Brief, the Judiciary intends to implement the Information Technology Strategy Plan ("ITSP") under which an integrated court case management system ("iCMS") would be implemented to streamline and standardize electronic court processes across different levels of courts and tribunals. Under iCMS, electronic services and facilities of various types may be used by litigants and the court (including court registries and offices).

4. The Bill seeks to provide an overall legislative framework to enable court-related documents to be created and handled in electronic form. Key provisions of the Bill are set out in the ensuing paragraphs.

Provisions of the Bill

e-Courts, e-system and supporting facilities

5. Parts 3, 4 and 8 of the Bill primarily seek to empower the Chief Justice ("CJ") to:

- (a) make rules to specify the courts and tribunals by or in relation to which e-technology may be used ("e-Courts");
- (b) designate an information system to facilitate the use of e-technology ("e-system") in relation to proceedings and for other court-related purposes, including, in particular, creating and sending documents in electronic form ("e-documents") and making electronic payments;
- (c) specify, by notice published in the Gazette (which would not be subsidiary legislation), the date from which e-technology may be used in relation to a particular e-Court or a type or description of proceeding ("e-proceedings"), thereby implementing ITSP in phases; and
- (d) make rules to regulate or prescribe the practice and procedure relating to the use of e-technology in courts and proceedings ("e-rules").

Application of e-technology to documents

6. Part 5 of the Bill mainly seeks to:

- (a) provide for the use of the e-system to create and handle e-documents for the purposes of e-proceedings; and
- (b) give, by virtue of Part 7 of the Bill, certain acts done by or through electronic means for e-proceedings (such as the service, authentication, production and keeping of documents) the same status as acts done using conventional paper-based methods.

7. In gist, if a statutory provision or a direction of a court requires or permits (a) a document to be in writing or (b) an act to be done with respect to a document in paper form, the provision or direction would be satisfied if the e-document concerned or act done in electronic form complies with certain specified requirements including:

- (a) that the e-document or act is, or is handled by an e-system, in compliance with the applicable e-rules and practice directions issued by CJ relating to the use of e-technology; and

- (b) that at the relevant time it was reasonable to expect that the information in electronic form incorporated in or associated with the e-document would be accessible so as to be usable for subsequent reference.

Documents to which e-technology would not apply

8. Part 6 of the Bill mainly seeks to empower the court to disallow the use of an e-system to send a document to the court in relation to an e-proceeding or a particular procedure. In exercising this power, the court might have regard to the nature of the proceeding or procedure, the conduct of a party or any other relevant factor. Further, under clause 26(3)(b) of the Bill, CJ would be empowered to make rules to specify the types or descriptions of documents that are required to be in paper form. According to paragraph 19 of the LegCo Brief, such rules may be applicable to certain original or certified documents to be produced in or submitted to court in respect of which there is a genuine need to examine the original or paper documents in court proceedings.

Admissibility of electronic records as evidence in legal proceedings

9. Under section 9 of Cap. 553, an electronic record shall not be denied admissibility in evidence in any legal proceeding on the sole ground that it is an electronic record. Clause 5 of the Bill proposes that if the Bill is passed, the enacted Ordinance would not affect the application of section 9 of Cap. 553 in relation to any legal proceeding.

Application of the Bill

10. Under clause 4 of the Bill, the Bill, if passed, would apply to the Government.

Other matters

11. The Bill also seeks to provide for the following matters:
- (a) the issuance of administrative instructions by the Judiciary Administrator relating to the use of an e-system;
 - (b) fees payable in respect of court-related matters carried out by an electronic mode; and
 - (c) savings and transitional arrangements.

Commencement

12. The Bill, if passed, would come into operation on a day to be appointed by CJ by notice published in the Gazette.

Public Consultation

13. According to paragraph 36 of the LegCo Brief, the Judiciary has consulted various stakeholders including the Hong Kong Bar Association and The Law Society of Hong Kong on the Bill and they generally support the proposed legislation. The Judiciary will continue to discuss the operational and technical issues with the stakeholders.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("Panel"), JA briefed the Panel at its meeting on 29 April 2019 on the legislative proposal for the implementation of ITSP. Members generally supported the early implementation of the legislative proposal. Some members raised certain concerns such as the slow implementation of ITSP, problems with adapting to the electronic mode of handling court transactions and relevant security issues. The Judiciary's information paper (LC Paper No. CB(4)1167/18-19(01)) providing further information on the proposed legislation and relevant draft rules (including those for certain proceedings in the District Court and Magistrates' Court) was circulated to members on 9 August 2019 but has not been discussed at any Panel meeting.

Conclusion

15. The Legal Service Division is scrutinizing the Bill. In view of the Panel members' concerns, Members may consider studying the Bill in detail.

Prepared by

LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
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